APPEAL NO. 032809
FILED DECEMBER 11, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on October 6, 2003. The hearing officer determined that appellant (claimant) sustained an injury in the course and scope of employment; that the date of injury was (alleged date of injury No. 1); and that respondent (carrier) is relieved of liability because claimant did not timely report his injury. Claimant appealed only the determinations regarding date of injury and timely notice. Carrier responded that the Appeals Panel should affirm the hearing officer's decision and order.

DECISION

We reverse and render.

We first address the determination that the claimant's date of injury is (alleged date of injury No. 1). Section 408.007 provides that the date of injury for an occupational disease is the date on which the employee knew or should have known that the disease may be related to the employment. Section 409.001 provides that an employee shall notify the employer of an injury that is an occupational disease not later than the 30th day after the date on which the employee knew or should have known that the injury may be related to the employment. At the hearing, carrier noted that claimant indicated in a recorded statement that it was "always" known that his current condition was caused by his work. However, claimant's statements must be considered in context of the diagnosed and claimed injury.

The hearing officer is the trier of fact and is the sole judge of the relevance and materiality of the evidence and of the weight and credibility to be given to the evidence. Section 410.165(a). The trier of fact may believe all, part, or none of any witness's testimony because the finder of fact judges the credibility of each and every witness, determines the weight to assign to each witness's testimony, and resolves conflicts and inconsistencies in the testimony. Taylor v. Lewis, 553 S.W.2d 153 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Texas Workers' Compensation Commission Appeal No. 93426, decided July 5, 1993. This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ).

A concrete diagnosis of a condition is not required to establish a date of injury for an occupational disease. Texas Workers' Compensation Commission Appeal No. 002012, decided October 16, 2000. A date of diagnosis is not determinative of the date an employee knew or should have known that a carpal tunnel syndrome (CTS) condition may be related to work. Appeal No. 002012. However, a hearing officer may consider that in determining the date of injury. Texas Workers' Compensation Commission Appeal No. 980363, decided April 8, 1998.

The fact that a claimant has pain while working has not automatically meant that the date of injury for a claimed occupational disease injury is the day the claimant knew that work activities caused pain. *See* Appeal No. 002012. In Texas Workers' Compensation Commission Appeal No. 982114, decided October 14, 1998, the Appeals Panel stated that a doctor diagnosed the claimant's condition as CTS and restricted her activities; that the doctor had not yet related it to work; and that medical knowledge will not be imputed to a claimant. The Appeals Panel affirmed as the date of injury the date the claimant learned of the work-related nature of the injury from a discussion with another patient in physical therapy. In Texas Workers' Compensation Commission Appeal No. 982314, decided November 2, 1998, the Appeals Panel reversed the determination of a hearing officer on the date of injury for a repetitive lifting injury, stating that there was no evidence that the claimant knew or should have known that the injury may be work-related until the claimant was notified by the doctor. Confusion about the cause of a condition may be relevant. In Texas Workers' Compensation Commission Appeal No. 960238, decided March 21, 1996, the Appeals Panel stated that the date of first symptoms does not necessarily constitute the date of injury, that the claimant was confused about the cause of his pain because his doctor had told him that he had arthritis, and that the evidence was sufficient to support a determination that the claimant's date of injury was the date the claimant's doctor told him he did not have arthritis. In another CTS case, the hearing officer determined that the date of injury was (alleged date of injury No. 2). The Appeals Panel stated that medical records with dates earlier than (alleged date of injury No. 3), referred to arthritis and did not mention a work-related cause; said that the claimant's testimony that she did not suspect a work-related cause until (alleged date of injury No. 3), was uncontroverted; and rendered a decision that the date of injury was (alleged date of injury No. 3). Texas Workers' Compensation Commission Appeal No. 992486, decided December 29, 1999. In Texas Workers' Compensation Commission Appeal No. 992520, decided December 31, 1999, the hearing officer stated that although none of the medical records opine that the CTS was caused by the claimant's work activities, her testimony regarding the lack of other activities that could have caused her condition should have made her aware of the work-related nature of her problems at the time they were diagnosed. The hearing officer determined that the date of injury was (alleged date of injury No. 4), the date of diagnosis of CTS. The Appeals Panel stated that there was no evidence to controvert the claimant's testimony that it was not until (alleged date of injury No. 5), that she began to consider her CTS to be work related and reversed the determination of the hearing officer and rendered a decision that the date of injury was (alleged date of injury No. 5).

In this case, claimant first learned that he had work-related CTS when he was told by Dr. B on October 29, 2002, and claimant then reported a work-related injury that same day. Prior to that, the medical records stated a diagnosis of arthritis and claimant himself said he thought he had arthritis.

The hearing officer found an (alleged date of injury No. 1), date of injury because of what claimant said in his recorded statement. The hearing officer noted that claimant said he first realized his hand problems were work related in the Spring of 2002.

Claimant did say that in the Spring of 2002, he knew that picking up one bag after another made his hands hurt. He said he knew "all along" that "[if] you pick those bags up all day like that and eventually you just . . . they'd start hurting and you, and you know, you know what's causing it." However, knowledge that the work causes pain is not knowledge of a work-related injury. Claimant said in his statement that as of 2002 his hands had been hurting quite a bit for about a year. He also said that, "when [his] hands and arms started getting numb all the time, that's when [he] decided to go report it." The adjuster asked claimant why he did not report an injury when he knew "that [his] problems with [his] hands were due to [his] work activities." Claimant answered that at first he thought he was getting arthritis in his fingers and that when he did start getting the numbness, he did report an injury.

A key fact in this case is that, when claimant did go to see Dr. H about his hand pain in April 2002, he was told he had *arthritis*. In an (alleged date of injury No. 1), report, Dr. H said claimant had numbness and a "dull arthritic type ache in PIP and DIP joints of both hands." Dr. H said that arthritis was then "discussed" with claimant.

In his recorded statement, the following exchange took place:

> Q: Okay. So did [Dr. H] ever recommend to you that this would be uh, that the *current problems* that you were having were due to your work or was it first mentioned by [Dr. B]?
>
> A: No, it's, it's been always been [sic] a pretty easily well known fact that it's work related.

Despite the fact that claimant said this, the nature of "current problems" must be examined. Claimant is not claiming that his injury is arthritis. There is no evidence that claimant's doctors said the then-diagnosed arthritis was work related. Claimant's "current problems" and claimed injury is CTS and he and his doctors were not even aware that he had CTS until October 2002 after he saw Dr. B. The record shows that it was not until he was diagnosed with CTS that any doctor said he had a work-related condition. If claimant had reported an injury within 30 days of the April 2002 date of injury found by the hearing officer, he would have been reporting an arthritis injury, which is an ordinary disease of life and generally not compensable. It is an accurate statement that in April 2002 claimant knew his work made his hands hurt. However, claimant also said he did not report an injury because he thought it was just arthritis and he was indeed told by doctors in April 2002 that he just had arthritis. Central to our holding is this: Even if claimant thought back in April 2002 that his then-diagnosed arthritis was somehow work-related, this does not mean that he was then required to report the current claimed CTS injury. We cannot uphold a determination that claimant was required to report a compensable CTS injury back in April 2002 when he was told that he had only a noncompensable ordinary disease of life and when he did not know and could not have known he had the compensable occupational disease injury CTS.

The hearing officer's determination that the claimant's date of injury is (alleged date of injury No. 1) is so against the great weight and preponderance of the evidence as to be clearly wrong or unjust and is reversed. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986). We render a decision that the date of injury is (date of injury). The hearing officer determined that the claimant notified the employer of the injury on October 29, 2002. We reverse the determination that the carrier is relieved of liability because the claimant did not timely notify the employer of the injury and render a decision that the claimant timely notified the employer of the injury and that the carrier is not relieved of liability.

According to information provided by carrier, the true corporate name of the insurance carrier is **AMERICAN HOME ASSURANCE COMPANY** and the name and address of its registered agent for service of process is

CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701.

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Judy L. S. Barnes
Appeals Judge

CONCUR:

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Gary L. Kilgore
Appeals Judge

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Thomas A. Knapp
Appeals Judge